

DEPARTMENT OF SOCIAL SERVICES

744 P Street, Sacramento, CA 95814



February 20, 2001

Regulation Package 1299-28

CDSS MANUAL LETTER NO. CCL-01-01

TO: HOLDERS OF THE COMMUNITY CARE LICENSING MANUAL, TITLE 22, DIVISION 6,
CHAPTER 1, GENERAL LICENSING REQUIREMENTS

Regulation Package #1299-28**Effective 1/1/01****Sections 80019**

These manual pages contain new Section 80019(b) which identifies those persons exempt from the fingerprint requirement in Welfare and Institutions Code Section 1522 (SB 1992, Chapter 819, Statutes of 2000).

These regulations were considered at the Department's public hearings held on January 20, 21 and 22, 2000.

FILING INSTRUCTIONS

Revisions to all manuals are shown in graphic screen. The attached pages are to be entered in your copy of the Manual of Policies and Procedures. The latest prior manual letter containing Community Care Licensing changes was Manual Letter No. CCL-00-26. The latest prior manual letter containing General Licensing Requirements regulation changes was Manual Letter No. CCL-00-20.

Page(s)Replace(s)

37 through 42

Pages 37 through 42

Attachment

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- (2) Section 1522(b) of the Health and Safety Code provides in part:

In addition to the applicant, the provisions of this section shall be applicable to criminal convictions of the following persons:

- (A) Adults responsible for administration or direct supervision of staff.
- (B) Any person, other than a client, residing in the facility.
- (C) Any person who provides client assistance in dressing, grooming, bathing, or personal hygiene. Any nurse assistant or home health aide meeting the requirements of 1338.5 or 1736.6, respectively, who is not employed, retained or contracted by the licensee, and who has been certified or recertified on or after July 1, 1998, shall be deemed to meet the criminal record clearance requirements of this section. A certified nurse assistant and certified home health aide who will be providing client assistance and who fall under this exemption shall provide one copy of his or her current certification, prior to providing care, to the adult community care facility. Nothing in this paragraph restricts the right of the department to exclude a certified nurse assistant or certified home health aide from a licensed community care facility pursuant to Section 1558.
- (D) Any staff person, volunteer, or employee who has contact with the clients.
1. A volunteer shall be exempt from the requirements of this subdivision if the volunteer is a relative of a client in care at the facility and is not used to replace or supplant staff in providing direct care and supervision of clients.
 2. A volunteer in an adult residential facility shall be exempt from the requirements of this subdivision if he or she is a relative, significant other, or close friend of a client receiving care in the facility and the volunteer is not used to replace or supplant staff in providing direct care and supervision of clients.
- (E) If the applicant is a firm, partnership, association, or corporation, the chief executive officer or other person serving in like capacity.
- (F) Additional officers of the governing body of the applicant, or other persons with a financial interest in the applicant, as determined necessary by the department by regulation. The criteria used in the development of these regulations shall be based on the person's capability to exercise substantial influence over the operation of the facility.

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80019 CRIMINAL RECORD CLEARANCE (Continued)**80019**

- (b) The following persons are exempt from the requirement to submit fingerprints:
- (1) A medical professional, as defined by the Department in regulations, who holds a valid license or certification from the individual's governing California medical care regulatory entity and who is not employed, retained, or contracted by the licensee, if all of the following apply:
 - (A) The criminal record of the individual has been cleared as a condition of licensure or certification by the individual's California medical care regulatory entity.
 - (B) The individual is providing time-limited specialized clinical care or services.
 - (C) The individual is providing care or services within the individual's scope of practice.
 - (D) The individual is not a community care facility licensee or an employee of the facility.
 - (2) A third-party repair person, or similar retained contractor, if all of the following apply:
 - (A) The individual is hired for a defined, time-limited job.
 - (B) The individual is not left alone with clients.
 - (C) When clients are present in the room in which the repairperson or contractor is working, a staff person who has a criminal record clearance or exemption is also present.
 - (3) Employees of a licensed home health agency and other members of licensed hospice interdisciplinary teams who have a contract with a client of the facility, and are in the facility at the request of that client or resident's legal decision maker.
 - (A) The exemption shall not apply to a person who is a community care facility licensee or an employee of the facility.

80019 CRIMINAL RECORD CLEARANCE (Continued)**80019**

- (4) Clergy and other spiritual caregivers who are performing services in common areas of the residential care facility, or who are advising an individual client at the request of, or with the permission of, the client.
- (A) This exemption shall not apply to a person who is a community care facility licensee or an employee of the facility.
- (5) Members of fraternal, service and similar organizations who conduct group activities for clients, if all of the following apply:
- (A) Members are not left alone with the clients.
- (B) Members do not transport clients off the facility premises.
- (C) The same group does not conduct such activities more often than once a month.
- (6) A volunteer, if all of the following apply:
- (A) The volunteer is supervised by the licensee or a facility employee with a criminal record clearance or exemption.
- (B) The volunteer is never left alone with clients.
- (C) The volunteer does not provide any client assistance with dressing, grooming, bathing or personal hygiene other than washing of hands.
- (7) The following persons in small family homes:
- (A) Adult friends and family of the licensee who come into the home to visit, for a length of time no longer than one month, provided they are not left alone with the children.
- (B) Parents of a child's friends when the child is visiting the friend's home and the friend, foster parent or both are also present.

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- (8) The following persons in adult day care and adult day support centers unless contraindicated by the client's individualized program plan (IPP), or needs and service plan:
- (A) A spouse, significant other, relative, close friend of a client.
 - (B) An attendant or facilitator for a client with a developmental disability if the attendant or facilitator is not employed, retained or contracted by the licensee.
 - (C) The exemptions in Section 80019(b)(8)(A) or (B) apply only if the person is visiting the client or providing direct care and supervision to the client.
- (9) The following persons in adult residential and social rehabilitation facilities unless contraindicated by the client's individualized program plan (IPP), or needs and service plan:
- (A) A spouse, significant other, relative, or close friend of a client, or the attendant or facilitator who is not employed, retained or contracted by the licensee for a client with a developmental disability, as long as the person is visiting the resident or providing direct care and supervision to that client only.
 - (B) An attendant or facilitator for a client with a developmental disability if the attendant or facilitator is not employed, retained or contracted by the licensee.
 - (C) The exemptions in Section 80019(b)(9)(A) or (B) apply only if the person is visiting the client or providing direct care and supervision to the client.
- (10) Nothing in this paragraph shall prevent a licensee from requiring a criminal record clearance of any individual exempt from the requirements of this section, provided that the individual has client contact.

80019 CRIMINAL RECORD CLEARANCE (Continued)**80019**

- (c) Prior to the Department issuing a license, the applicant, administrator and any adult other than a client, residing in the facility shall obtain a California criminal record clearance or exemption as specified in Health and Safety Code Section 1522(a)(5).

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- (1) Health and Safety Code Section 1522(a)(5) provides in part:

An applicant and any other person specified in subdivision (b) of the Health and Safety Code Section 1522 shall submit a second set of fingerprints to the Department of Justice for the purpose of searching the criminal records of the Federal Bureau of Investigation, in addition to the criminal records search required by this subdivision. If an applicant and all other persons described in subdivision (b) of Health and Safety Code Section 1522 meet all of the conditions for licensure, except the receipt of the Federal Bureau of Investigation's criminal history information for the applicant or any of the persons described in subdivision (b) of Health and Safety Code Section 1522, the Department may issue a license if the applicant and each person described in subdivision (b) of Health and Safety Code Section 1522 has signed and submitted a statement that he or she has never been convicted of a crime in the United States, other than a traffic infraction, as defined in paragraph (1) of subdivision (a) of Section 42001 of the Vehicle Code. If, after licensure, the Department determines that the licensee or person described in subdivision (b) of Health and Safety Code Section 1522 has a criminal record, the license may be revoked pursuant to Health and Safety Code Section 1550. The Department may also suspend the license pending as administrative hearing pursuant to Health and Safety Code Section 1550.5.

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- (d) Prior to employment, residence or initial presence in the facility, all individuals subject to criminal record review shall be fingerprinted and sign a declaration under penalty of perjury regarding any prior criminal convictions that acknowledges and explains the criminal convictions. The declaration shall also acknowledge that his/her continued employment, residence or presence in the facility is subject to approval of the Department as specified in Section 80065(i).
- (1) The licensee shall submit these fingerprints to the California Department of Justice, along with a second set of fingerprints for the purpose of searching the records of the Federal Bureau of Investigation, or to comply with the requirements of Section 80019(e), prior to the individual's employment, residence, or initial presence in the community care facility.
- (A) Fingerprints shall be submitted to the California Department of Justice by the licensee, or sent by electronic transmission to the California Department of Justice by a fingerprinting entity approved by the Department.
- (B) A licensee's failure to submit fingerprints to the California Department of Justice or to comply with Section 80019(e), shall result in the citation of a deficiency and an immediate assessment of civil penalties of one hundred dollars (4100) per violation by the Department.

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1. The Department may assess civil penalties for continued violations as permitted by Health and Safety Code Section 1548.
 2. The licensee shall then submit the fingerprints to the California Department of Justice for processing.
- (2) To continue to be employed, reside, or be present in a community care facility, each individual shall:
- (A) Be exempted from fingerprinting by statute or regulation.
 - (B) Have a criminal record clearance, or
 - (C) Have a criminal record exemption approved by the Department.
- (e) Unless otherwise exempted from the fingerprint requirements in health and Safety Code Section 1522(b), any staff person, volunteer or employee who has client contact and any resident, other than a client, must submit fingerprints.

80019 CRIMINAL RECORD CLEARANCE (Continued)**80019**

- (f) An individual may request a transfer of their criminal record clearance from one state licensed facility to another, or from TrustLine to a state licensed facility by providing the following documents:
- (1) A signed written request to the Department.
 - (2) A copy of the individual's driver's license, or
 - (3) A valid identification card issued by the Department of Motor Vehicles, or
 - (4) A valid photo identification issued by another state or the United States government if the individual is not a California resident.
 - (5) Any other documentation required by the Department [i.e., LIC 508, Criminal Record Statement (Rev. 3/99) which is incorporated by reference, and job description].

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- (6) Health and Safety Code Section 1522(h) provides:
- (A) The California Department of Social Services shall hold criminal record clearances in its active files for a minimum of two years after an employee is no longer employed at a licensed facility in order for the criminal record clearances to be transferred.

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- (g) If the criminal record transcript of any of the individuals specified in Health and Safety Code Section 1522(b) discloses a plea or verdict of guilty or a conviction following a plea of nolo contendere for any crime other than a minor traffic violation for which the fine was less than \$300, and an exemption pursuant to Section 80019.1(a) has not been granted, the Department shall take the following actions:

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80019 CRIMINAL RECORD CLEARANCE (Continued)**80019**

- (1) For initial applicants, denial of the application.
 - (2) For current licensees, the Department may institute an administrative action, including, but not limited to, revocation of the license.
 - (3) For current or prospective employees, exclusion of the affected individual pursuant to Health and Safety Code Section 1558, and denial of the application or revocation of the license, if the individual continues to provide services and/or reside at the facility.
 - (4) For convicted individuals residing in the facility, exclusion of the affected individual pursuant to Health and Safety Code Section 1558, and denial of the application or revocation of the license, if the individual continues to provide services and/or reside at the facility.
- (h) The Department shall notify the licensee and the affected individual associated with the facility, in concurrent, separate letters, that the affected individual has a criminal conviction and needs to obtain a criminal record exemption.

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- (1) Section 1522(c)(3) of the Health and Safety Code provides in part:
 - (A) Except for persons specified in paragraph (2) of subdivision (b), the licensee shall endeavor to ascertain the previous employment history of persons required to be fingerprinted under this subdivision. If it is determined by the California Department of Social Services, on the basis of the fingerprints submitted to the Department of Justice, that the person has been convicted of, or is awaiting trial for a sex offense against a minor, or has been convicted for an offense specified in Section 243.4, 273a, 273d or subdivision (a) or (b) of Section 368 of the Penal Code, or has been convicted of a felony, the California Department of Social Services shall notify the licensee to act immediately to terminate the person's employment, remove the person from the community care facility, or bar the person from entering the community care facility. The California Department of Social Services may subsequently grant an exemption pursuant to subdivision (g). If the conviction was for another crime except a minor traffic violation, the licensee shall, upon notification by the California Department of Social Services, act immediately to either (1) terminate the person's employment, remove the person from the child day care facility, or bar the person from entering the child day care facility; or (2) seek an exemption pursuant to subdivision (g). The department shall determine if the person shall be allowed to remain in the facility until a decision on the exemption is rendered.

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- (B) The department may issue an exemption on its own motion pursuant to subdivision (g) if the person's criminal history indicates that the person is of good character based on the age, seriousness, and frequency of the conviction or convictions. The department, in consultation with interested parties, shall develop regulations to establish the criteria to grant an exemption pursuant to this paragraph.
- (2) Section 1522(e) of the Health and Safety Code provides in part:
- The California Department of Social Services shall not use a record of arrest to deny, revoke, or terminate any application, license, employment, or residence unless the department investigates the incident and secures evidence, whether or not related to the incident or arrest, that is admissible in an administrative hearing to establish conduct by the person that may pose a risk to the health and safety of any person who is or may become a client.
- (3) Section 243.4 of the Penal Code provides in part:
- (A) Any person who touches an intimate part of another person while that person is unlawfully restrained by the accused or an accomplice, and if the touching is against the will of the person touched and is for the purpose of sexual arousal, gratification, or abuse, is guilty of sexual battery. Such an act is punishable by either imprisonment in the county jail for not more than one year or in the state prison for two, three, or four years.
- (B) Any person who touches an intimate part of another person who is institutionalized for medical treatment and who is seriously disabled or medically incapacitated, if the touching is against the will of the person touched, and if the touching is for the purpose of sexual arousal, gratification, or abuse, is guilty of sexual battery. Such an act is punishable by either imprisonment in the county jail for not more than one year or in the state prison for two, three, or four years.
- (4) Section 273a of the Penal Code provides:

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80019 CRIMINAL RECORD CLEARANCE (Continued)

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- (A) Any person who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of such child to be injured, or willfully causes or permits such child to be placed in such situation that its person or health is endangered, is punishable by imprisonment in the county jail not exceeding one year, or in the state prison for 2, 3 or 4 years.
- (B) Any person who, under circumstances or conditions other than those likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of such child to be injured, or willfully causes or permits such child to be placed in such situation that its person or health may be endangered, is guilty of a misdemeanor.
- (5) Section 273d of the Penal Code provides:
- Any person who willfully inflicts upon any child any cruel or inhuman corporal punishment or injury resulting in a traumatic condition is guilty of a felony, and upon conviction thereof shall be punished by imprisonment in the state prison for 2, 4 or 6 years, or in the county jail for not more than one year, or by a fine of up to six thousand dollars (\$6,000) or by both.
- (6) Section 368 of the Penal Code provides:
- (A) Any person who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any elder or dependent adult, with knowledge that he or she is an elder or a dependent adult, to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any elder or dependent adult, willfully causes or permits the person or health of the elder or dependent adult to be injured, or willfully causes or permits the elder or dependent adult to be placed in a situation such that his or her person or health is endangered, is punishable by imprisonment in the county jail not exceeding one year, or in the state prison for two, three, or four years.

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80019 CRIMINAL RECORD CLEARANCE (Continued)

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- (B) Any person who, under circumstances or conditions other than those likely to produce great bodily harm or death, willfully causes or permits any elder or dependent adult, with knowledge that he or she is an elder or a dependent adult, to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any elder or dependent adult, willfully causes or permits the person or health of the elder or dependent adult to be injured or willfully causes or permits the elder or dependent adult to be placed in a situation such that his or her person or health may be endangered, is guilty of a misdemeanor.
- (7) Section 1522(c) of the Health and Safety Code provides in part:

If the conviction or arrest was for another crime, except a minor traffic violation, the licensee shall, upon notification by the California Department of Social Services, act immediately to either (1) terminate the person's employment, remove the person from the community care facility, or bar the person from entering the community care facility; or (2) seek an exemption pursuant to subdivision (f). The California Department of Social Services shall determine if the person shall be allowed to remain in the facility until a decision on the exemption is rendered.

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- (i) The licensee shall maintain documentation of criminal record clearances or criminal record exemptions of employees in the individual's personnel file as required in Section 80066.
- (j) The licensee shall maintain documentation of criminal record clearances or criminal record exemptions of volunteers that require fingerprinting and non-client adults residing in the facility.
- (1) Documentation shall be available for inspection by the Department.

NOTE: Authority cited: Section 1530, Health and Safety Code. Reference: Sections 1503.5, 1505, 1508, 1522, 1531 1533, 1538, 1540, 1540.1, 1541, 1547, 1549, and 14564, Health and Safety Code.